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MR.ROBINSON: I have a stipulation, but I would like to take some testimony to make a prima facie case on the others that have put in counterclaims.  
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JOHN W. HOOVER: called by the defendant John W.Hoover, being first duly sworn, testifies as follows:

DIRECT EXAMINATION By Mr Robinson.

- Q Your name is John W.Hoover? A. Yes sir.
- Q You are one of the defendants in this action?
- A Yes sir.
- Q Have you entered into a stipulation concerning your water rightx with the plaintiff Provo Reservoir Company?
- A Yes sir.
- Q You were granted certain water rights under the John F.Chidester decree, were you not?
- A Yes sir.
- Q What were those rights?
- A One hundred and fourteen minute feet.
- Q And what right under that decree, so far at that water right you are now speaking of is concerned do you now claim?
- A Fourteen feet.
- Q Fourteen minute feet, cubic feet per minute?
- A Yes.
- Q You disposed of one hundred minute feet, did you?
- A Yes sir.
- Q To whom did you sell that?
- A John Dixon.
- Q What other rights do you claim under the John F.Chidester decree?
- A Why, it is one-tenth of the waters that were decreed to the Wright Estate on the west side of Provo River, which was, I think a hundred minute feet.
- Q. You claim you were awarded one-tenth of that under the John F. Chidester decree?
- A Transferred from the Wright estate to me.

Q You have stipulated with the plaintiff that that water right is equal to one-hundred cubic feet per minute, and you are entitled to one-tenth of that, or ten cubic feet per minute from that source?

A Yes sir.

THE COURT: Coming from the Wright Estate?

MR. ROBINSON: Yes.

Q. You also have some spring that arise on your farm, do you not?

A Yes sir.

Q About how much water do you--- or land do you irrigate from those springs?

A Possibly thirty acres.

Q The springs arise on your land and in the low water season you utilize all the water of the springs do you?

A Yes sir. Of course, that land is on a different place to what the Chidester decree was.

Q That is on what is known as the Deer Creek?

A Lower place, yes sir.

Q You are also by your answer claiming a high water right for eighty acres of this land which is particularly described in your answer? A. Yes sir.

Q And how long have you been using this high water right?

A Since 1910.

Q. That water right is subsequent to the Provo Reservoir filing, is it?

A Yes sir.

MR. ROBINSON: In Mr. Hoover's answer, if the court please, we set up that he had a water right of 11 cubic feet per minute, as provided by the John F. Chidester decree, but look over that decree we found it was one fourth and he is only claiming 14. I should like to have the privilege of amending that.

THE COURT: It may be amended to conform to the proof now introduced.

## CROSS EXAMINATION By Mr. Ray.

- Q. Mr. Hoover, the right awarded to you under the Chidester decree was a high water right~~water~~~~right~~ was it not?
- A No sir, Under the Chidester decree you say?
- Q Under the Chidester decree, it was not a low water right, was it?
- A Yes sir.
- Q It was? A. Yes sir.

MR. RAY: I want to consult the decree about that, your Honor please.

THE COURT: Class A water, 114 minute feet of Class A water and of spring water.

- Q Now you had certain springs there in addition to the waters awarded by the Chidester decree, did you not?
- A I think, yes, there was springs that were mentioned, before, use it one way or another.
- Q You have been using those on the land?
- A Yes sir.
- Q And the Chidester decree provided you should have sufficient water from the river in addition to equal 114 minute feet?
- A Yes sir. ( Underscore inserted by us)
- Q. Do you know the flow of the springs referred to in the Chidester decree, the amount of water?
- A No, I don't.
- Q Minute feet?
- A No, I don't.
- Q When did you transfer the water, the one-hundred minute feet to John D. Dixon?
- A Why, I could not tell exactly, I think about nine years ago.
- Q And since that time you have continued to use the same quantity of water <sup>upon the land</sup> you used prior to the transfer, have you not?
- A No sir.
- Q And are proceeding now to claim a high water right from the Provo River?
- A The high water right is on different land.

- Q Where are the lands located upon which you claim under the Chidester decree the right to the use of 114 minute feet.
- A They are on the river, I could not tell.
- Q About where in the canyon?
- A Yes sir.
- Q How high up in the canyon?
- A Well, right at the head of the Provo Canyon.
- Q Near the Wright estate?
- A Joining onto the Wright estate.
- Q So that whatever waters were applied upon those lands, the seepage and return water went to the river?
- A Did it go to the river.
- Q Went into the river did it not?
- A I don't know.
- Q Where was the natural drainage of the land, toward the river?
- A The land laid about the same way the river did, yes.
- Q Whatever water went through the soil would go down into the river bed and down the river would they not?
- A Naturally suppose they would, I could'nt say they did.
- Q How many acres of land did you have there, Mr. Hoover?
- A I think we irrigate from sixty-five to seventy-five acres.
- Q You did at the time of the Chidester decree?
- A Yes sir.
- Q How many acres have you irrigated in the last six or seven years there?
- A Why, we irrigate about the same amount in high water time, in fact we don't irrigate, the river raises there and irrigates so that we can raise a crop of hay.
- Q You raise timothy? A Yes sir.
- Q One crop of timothy. A Yes sir.
- Q That is all you ever did raise, isn't it, one crop of timothy?
- A When we have it in hay, yes.
- Q What else have you ever raised on that except timothy hay?
- A Sugar beets and grain.

- Q. Did you raise grain and sugar beets on that prior to the Chidester decree?      A. Yes sir.
- Q. How long ago did you raise sugar beets upon that?
- A. I think about thirteen years ago, twelve or thirteen.
- Q. How many acres?
- A. Possibly neighborhood of ten acres.
- Q. For how many years?
- A. Well I don't know exactly, two or three.
- Q. What other crops besides timothy and sugar beets did you ever raise upon that?
- A. Oast, barley.
- Q. Prior to the Chidester decree?      A. Yes sir.
- Q. Have you raised them since the Chidester decree?
- A. Some little not much.
- Q. Raised sugar beets since the Chidester decree?
- A. No sir.
- Q. How many acres of land will your spring upon that property take care of in the low water season?
- A. Well not very many.
- Q. How many?
- A. Approximately five or six.
- Q. Any other seepage water coming onto it?
- A. No sir.
- Q. And you have personally attended to the irrigation of that land?
- A. No sir.
- Q. Isn't it a fact, Mr. Hoover, that land has been irrigated each and every year during the past several years in the same method and to the same extent it was irrigated prior to the Chidester decree,      A. No sir.
- Q. More or less?
- A. We have used this 14 feet I suppose, I never have seen the commissioner, we measured it myself, but we propose to have this fourteen feet and ten additional of the Wright water.

- Q Do you know whether that Wright water has ever been used at any time, of your own knowledge?
- A No I don't know, they have measured it to us.
- Q Do you know whether or not any high water has been used upon there of your own knowledge. A. Yes sir.
- Q. That floods out and cannot keep it from flooding, can you?
- A. Yes, then we have it in ditches and put it on higher ground.
- Q Have you done that personally? A No sir.
- Q Have seen it done? A Yes sir.
- Q Each year? A Yes sir.
- Q For how many years past?
- A Well, ever since and before the Chidester decree.
- Q So that you are using as to high water now the same quantity you used before and since the Chidester decree, that is, you have used the same quantity during the two periods before and after the Chidester decree? A Yes sir.
- Q You only claim the right in low water to fourteen minute feet there?
- A With the exception of the one-tenth.
- Q One-tenth of the Wright estate? A Yes sir.
- Q And your springs?
- A ~~Yes sir, we don't claim any springs on there at all~~ Yes sir, we don't claim any springs on there at all not the use of any spring.
- Q Do you know what springs it is that are referred to in the Chidester decree in connection with the 114 minute feet?
- A There was one spring on the lower end, toward the lower end of this ground we used to back up some.
- Q Do you know? A No Sir.
- Q Can you now just the same as you used to? A Yes sir.

## DIRECT EXAMINATION BY Mr. Robinson.

Q Mr. Hoover, do you have any more water now for your upper farm, that is the farm on which you have 14 minute feet primary water decreed under the Chidester decree and 10 minute feet which you purchased from the Wright estate than you actually need to take care of your crops on that farm?

A No sir.

Q And is this water used by you every year? A Yes sir.

Q During the low season? A Yes sir.

Q And has been used for how long?

A Well, we have used water there ever since I owned the ground, and before, I suppose it has been used there for thirty-five years.

Q. Now in regard to this spring that is on this upper farm, what kind of a spring is that?

A It is a spring, kind of a slough that comes out from-- appears to come out from under the canyon there.

Q Do you that water? A No sir.

Q Have you ever used it? A We used to use it.

Q The springs refered to in your answer are springs that arise on your lower farm, or Deer Creek farm, are they not?

A Yes sir.

Q And that is where you irrigate thirty acres of land from the spring

A. Yes sir.

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12:00 Noon, Recess to 2:00 P.M.

JOHN W. HOOVER \*- - - -

CROSS EXAMINATION By Mr. Ray.

Q Mr Hoover, how many acres of land did you say you had at the

point where you were decreed 114 minute feet?

A. I think we farm from 65 to 70 acres.

Q. How many of them did you irrigate during the entire irrigation season?

A. Why, I don't know, I couldn't tell what we irrigated in low water time now. Of course, before we sold the water we irrigated pretty well all of it.

Q. By direct irrigation or by sub-irrigation?

A. Good many years ago it was irrigated by sub-irrigation.

Q. That was true up to the time of the Chidester decree, a large part of it was irrigated by sub-irrigation, was it not?

A. No sir, I think it was about five years before that Chidester decree that I took out of a ditch, out of the river.

Q. Out of the river or out of the slough?

A. It is the slough at the Wallsburg switch, coming out of the river. Well, it was the drainage of the river.

Q. Was it the slough that forms on the side of the river there from which you took your ditch?

A. Well, it was the slough going out into the field there and back into the river at the wagon road above my ground.

Q. You took your ditch out of the slough from the Wallsburg ditch, did you not?

A. Yes sir.

Q. Never did have a direct connection with the river, did you?

A. That is the drainage of the river. I don't know whether you would call it the river or not.

Q. Then you used your spring which irrigated how many acres?

A. I think four or five acres. We never used that much after we got the ditch out because when we used that we had to back it up and it drowned out about as much land as it irrigated.

Q. How long since you have used that spring at all?

A. I don't think we have used it to amount to anything since we have the ditch there.

Q. You were not using the spring at all at the time of the entry



of the Chidester decree?

A. Not to speak of.

Q. You claimed the right to use the spring, did you not, at that time?

A. Yes, I guess we had a right to, I don't know.

Q. Didn't you, as a matter of fact, in that litigation claim the right to use that spring?

A. We were only claiming the use of the spring because we had used the water. When we got the ditch out we didn't want to use it because it damaged the land in the way we irrigated it.

Q. You say you had ten acres of sugar beets one year? A. Yes sir.

Q. How many tons did you get that year? A. I don't know.

Q. Where did you sell them? A. We shipped them, I think, to Lehi.

Q. You saw the beets growing? A. Yes sir.

Q. Measured the acreage? A. No sir.

Q. Sure it was ten acres? A. Well, neighborhood of that, yes.

Q. You have irrigated that farm, have you not, every year since 1907, the year of the entry of the Morse decree? A. Part of it.

Q. Of the Chidester decree? A. Part of it.

Q. The same parts you always did irrigate? A. No sir.

Q. How many acres of it now sub-irrigates?

A. There isn't any of it, I don't think, only what sub-irrigates in the spring.

Q. How much of it sub-irrigates in the spring?

A. All of it, I have seen the water all over it.

Q. The entire farm sub-irrigates in the spring? A. Yes.

- Q. Are you claiming any high water for it whatever in the spring?
- A. I have not.
- Q. You are not now claiming any high water for that land? A. No sir.
- Q. How late does that sub-irrigation continue?
- A. As long as the river is up.
- Q. Up to what stage? A. I don't know.
- Q. Those springs would irrigate, I understood you to say this morning, about six acres? A. Oh, from four to six acres, something like that.
- Q. Is there only one spring on the place?
- A. That one that amounted to anything.
- Q. Were there other springs?
- A. Along the barrow pits of the railroad the water seeped through there from the river. Barrow pits is about as low as the river bed.
- Q. Would say those springs flowed fourteen minute feet of water?
- A. No sir, I would not.
- Q. How many minute feet of water would say they did flow?
- A. I don't know.
- Q. Why do you say they don't flow fourteen, if you don't know what they do flow? A. I thought you said did I say they flowed fourteen.
- Q. I say would you say they did flow fourteen minute feet?
- A. I think they might, yes.
- Q. Now, where does the ditch go you take out of this slough, or the branch of the river by the Wallburg switch?
- A. It comes down on my land.
- Q. And then is divided into irrigation ditches there?
- A. Well, it follows right around the wagon road pretty well.
- Q. At the top of the land?
- A. Not until it gets to my land and then it runs off on to the land.
- Q. How many acres of irrigable land lie below the ditch, and land

you have cultivated?

- A. Well, about all of it lays below the ditch, besides a few acres, part of it we flume across the river. We have done until the last few years. The last year we made a ditch on the other side of the river.
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JOSEPH R. MURDOCK recalled by the defendant J. W. Hoover testifies as follows:

DIRECT EXAMINATION By Mr. Robinson.

- Q. Your name is Joseph R. Murdock? A. Yes sir.
- Q. You are the president of the Provo Reservoir Company? A. Yes sir.
- Q. Acquainted with the Hoover farm which is situated in Provo canyon and known as the upper farm?
- A. Yes sir, somewhat, quite well acquainted with it.
- Q. Have you been acquainted with this farm for many years?
- A. Well, mostly as I have passed over it, crossed it all kinds of ways almost, hunting, fishing, and looking it over.
- Q. You were also administrator of the Wright estate at the time that the John F. Chidester decree was entered, were you not? A. Yes.
- Q. And as administrator, did you decree a certain amount of water to John W. Hoover, did you transfer it?
- A. Some years after the decree in a settlement with Mr. Hoover between the Wright estate and himself on lands and water we conceded to him, tenth, or one-tenth of all the water on the west side of Provo river that had been decreed to the Wright estate.
- Q. And in your judgment what would that water amount to in cubic flow?
- A. About a hundred cubic feet per minute.
- Q. He would be entitled then, under your agreement to one-tenth

of that?

- Q. Do you know whether or not he is now irrigating his farm?
- A. As I have observed from the road and from the railroad and wagon road which passes through it, I have thought that he was irrigating all of it.
- Q. You think that fourteen--
- A. Pardon me, at least during the high water period.
- Q. You think that fourteen cubic feet of water per minute as a primary right, together with the water right that he has from the Wright estate would be more than sufficient water to irrigate his farm as it now is?
- A. Not if he takes it across the river, takes part of it across the river, I would think it would take all of that.
- Q. There would be some that could not be used beneficially?
- A. No, not of the 14 minute feet.
- Q. Do you know what kind of crops he is raising there?
- A. Only as I have observed them passing through his farm from the railroad.

GROSS EXAMINATION By Mr. Ray.

- Q. Those crops are largely timothy, are they not?
- A. Yes sir, and hay. That is, wild hay.
- Q. That is a crop <sup>which</sup> ~~that~~ requires the maximum of water, is it not?
- A. Yes, it requires a great deal of water.
- Q. More so than the average farm crop?
- A. Well, I would think so, to do justice to it.
- Q. But in your opinion, the springs arising on the land and 14 minute feet of water are sufficient for the irrigation of the entire tract, are they?
- A. Not in high water time. The river rises and during the high water season ending about July first usually, I would say that was plenty to finish up what he had.
- Q. 14 minute feet and these springs would be sufficient?
- A. Yes, after the high water is gone.

MR. ROBINSON: That is all.